

**Filed 3/19/15 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2015 ND 51

Angela Nails,

Plaintiff and Appellant

v.

US Bank (USA) N.A.,

Defendant and Appellee

No. 20140329

Appeal from the District Court of Cass County, East Central Judicial District,
the Honorable John C. Irby, Judge.

AFFIRMED.

Per Curiam.

Angela Nails, self-represented, 15406 Bellaire Ave., Apt. M, Grandview, MO
64030, plaintiff and appellant; submitted on brief.

Christopher M. Kennelly, P.O. Box 2105, Fargo, ND 58103, for defendant and
appellee; submitted on brief.

Nails v. US Bank (USA) N.A.

No. 20140329

Per Curiam.

[¶1] Angela Nails appealed from a district court judgment dismissing her action against U.S. Bank under N.D.R.Civ.P. 12(b). Nails failed to file a responsive brief to U.S. Bank’s motion to dismiss as required under N.D.R.Ct. 3.2(c), and the district court treated the failure to file as an admission and dismissed the claim with prejudice. Nails argued the district court abused its discretion in granting U.S. Bank’s motion. We summarily affirm under N.D.R.App.P. 35.1(a)(1) and (4).

[¶2] U.S. Bank requests attorney fees and double costs under N.D.R.App.P. 38 for a frivolous appeal. “An appeal is frivolous if it is flagrantly groundless, devoid of merit, or demonstrates persistence in the course of litigation which evidences bad faith.” Holbach v. Holbach, 2010 ND 116, ¶ 17, 784 N.W.2d 472 (quoting Healy v. Healy, 397 N.W.2d 71, 76 (N.D. 1986)). Nails’s arguments and unsupported assertions on appeal are “so factually and legally devoid of merit that [she] should have been aware of the impossibility of success on appeal.” Riemers v. O’Halloran, 2004 ND 79, ¶ 16, 678 N.W.2d 547. We award U.S. Bank double costs and nominal attorney fees of \$500 for defending the appeal.

[¶3] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Lisa Fair McEvers
Daniel J. Crothers
Dale V. Sandstrom